

THE HONORABLE ROBERT S. LASNIK

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

KAELI GARNER, *et al.*,

Plaintiffs,

v.

AMAZON.COM, INC., a Delaware  
Corporation, and AMAZON.COM SERVICES  
LLC, a Delaware Limited Liability Company,

Defendants.

Case No. 2:21-cv-00750-RSL

**AMAZON'S MOTION PURSUANT TO  
LOCAL RULE 7(F) FOR LEAVE TO  
FILE AN OVER-LENGTH MOTION  
FOR SUMMARY JUDGMENT**

NOTE ON MOTION CALENDAR:  
July 29, 2024

1 Pursuant to Local Rule 7(f), Amazon respectfully seeks leave to file an over-length brief  
2 in support of Amazon’s forthcoming motion for summary judgment.

3 On June 18, 2024, Plaintiffs filed their motion for class certification. By stipulation,  
4 Amazon’s opposition is due September 16, 2024, and Plaintiffs’ reply is due October 31, 2024.  
5 Amazon intends to file a summary judgment motion challenging the remaining claims of all ten  
6 remaining Plaintiffs. It is important that the Court consider Amazon’s motion in conjunction with  
7 Plaintiffs’ class certification motion. As Amazon will explain in its motion, discovery revealed  
8 that Plaintiffs’ remaining claims all fail as a matter of law. Unless Plaintiffs have viable claims of  
9 their own, they cannot act on behalf of any putative class. *Martinez v. Newsom*, 46 F.4th 965, 970  
10 (9th Cir. 2022), *cert. denied*, 143 S. Ct. 1782 (2023) (“[A] named plaintiff who has not been  
11 harmed by a defendant is generally an inadequate and atypical class representative for purposes of  
12 Federal Rule of Civil Procedure 23.”) (*citing La Mar v. H & B Novelty & Loan Co.*, 489 F.2d 461,  
13 465-66 (9th Cir. 1973)). Consequently, Amazon’s motion might render class certification partially  
14 or entirely moot.

15 Amazon’s motion will cover a lot of ground. The ten Plaintiffs collectively assert eight  
16 remaining causes of action under the laws of six states (Washington, Florida, New Hampshire,  
17 California, Maryland, and Pennsylvania) and the Federal Wiretap Act. (The Court’s dismissal  
18 order eliminated many of Plaintiffs’ original claims, and some of the original plaintiffs later took  
19 voluntary dismissals.) Amazon also must lay out the facts it has learned about each Plaintiff,  
20 including that some who claimed to be “unregistered” Alexa users are in fact registered, and all  
21 had knowledge of Amazon’s disclosures and how the Alexa service operates. Amazon must then  
22 address general legal issues applicable across Plaintiffs and their claims—e.g., equitable estoppel,  
23 governing law, consent—and the specific elements of each law that Plaintiffs invoke, as applied  
24 to their individualized facts. It would be impossible to accomplish all of that in the 8,400 words  
25 allowed by LCR 7(e)(3). Therefore, Amazon requests that the Court approve the following word  
26 counts: Amazon’s motion (42,000 words); Plaintiffs’ opposition (42,000 words); Amazon’s reply  
27 (21,000 words).

1 Amazon's proposed word counts are reasonable and proportional to the size and scope of  
2 this case, the number of Plaintiffs and claims, and the need to determine whether Plaintiffs have  
3 viable individual claims before allowing them to act for any class. Under the rules, Amazon  
4 believes it could file separate summary judgment motions targeted at each Plaintiff, which would  
5 yield 84,000 total words, or at each Plaintiff household, which would yield 58,800 total words.  
6 Amazon's proposed approach is more efficient for the parties and the Court. It is also consistent  
7 with past briefing in this case. For Amazon's dismissal motion, the parties stipulated to, and the  
8 Court approved, page limits of 60/60/30 for the motion, opposition, and reply respectively.<sup>1</sup> That  
9 motion involved far fewer issues and no developed factual record. It is logical and reasonable that  
10 the parties would be afforded twice the space for Amazon's summary judgment motion.

11 Amazon asked Plaintiffs to stipulate to Amazon's proposal. Plaintiffs rejected the proposal  
12 and refused to offer any alternative. Plaintiffs contend that Amazon's summary judgment motion  
13 is "premature" and should not be filed until after resolution of Plaintiffs' class certification motion.  
14 But nothing in the rules or the Court's case schedule precludes Amazon from moving for summary  
15 judgment now. Moreover, the Ninth Circuit has long recognized that summary judgment not only  
16 can, but in some cases should, be decided before class certification. *Wright v. Schock*, 742 F.2d  
17 541, 544 (9th Cir. 1984) ("It is reasonable to consider a Rule 56 motion first when early resolution  
18 of a motion for summary judgment seems likely to protect both the parties and the court from  
19 needless and costly further litigation."). Amazon respectfully submits that the Court cannot  
20 comprehensively consider class certification without first, or at least simultaneously, assessing  
21 whether any Plaintiff has viable claims of their own.

22 Accordingly, Amazon requests that the Court approve Amazon's proposed word counts.

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27 <sup>1</sup> Under the conversion ratio in LCR 7(e)(3), 60 pages translates to ~21,000 words and 30 pages  
28 to ~10,500 words.

1 Dated: July 29, 2024

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1                                    **LCR 7(f) WORD-COUNT CERTIFICATION**

2                    As required by Western District of Washington Local Civil Rule 7(f), I certify that this  
3 brief contains 699 words.

4                    Dated: July 29, 2024

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